

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLAN D. BUYNA,

Petitioner,

v.

Civil Action No. 15 -1283

Judge Terrence McVerry/

Chief Magistrate Judge Maureen P. Kelly

MICHAEL OVERMYER, STEPHEN
ZAPALLA, and KATHLEEN KANE,

Respondents.

MEMORANDUM ORDER

Allan D. Buyna, (“Petitioner”), a state prisoner, proceeding pro se, has filed a Petition for Writ of Habeas Corpus (the “Petition”) ostensibly pursuant to 28 U.S.C. § 2254, and an ostensible Rule 60(b) Motion challenging, in effect, the constitutionality of his state conviction.

The case was referred to Chief Magistrate Judge Maureen Kelly in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D.

Chief Magistrate Judge Kelly’s Report and Recommendation, ECF No. 9, filed on October 16, 2015, recommended that the Petition be denied pre-service pursuant to Rule 4 because the Petition is second or successive, and therefore this Court lacks subject matter jurisdiction over the Petition. The Report also determined that Petitioner cannot use Fed.R.Civ.P. No. 60(b) in order to challenge a state court judgment. Petitioner was informed that he could file Objections to the Report. After being granted an extension of time in which to file Objections, Petitioner filed Objections on November 6, 2015. ECF No. 12.

Nothing in Petitioner’s Objections merits rejection of the Report or any comment as the Report is clearly correct. Nothing in the nine pages of Objections refutes the fact that this Court

is without subject matter jurisdiction (until and unless the United States Court of Appeals grants Petitioner leave to file a second Section 2254 habeas petition) to say that the state statute under which Petitioner was charged and convicted was void.

AND NOW, this 10th day of November, 2015, after de novo review of the record in this case including the Report and Petitioner's Objections;

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus, ostensibly filed pursuant to 28 U.S.C. § 2254 is DISMISSED.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 9, of Chief Magistrate Judge Kelly, dated October 16, 2015, is adopted as the opinion of the Court.

All pending motions are DENIED as moot.

s/Terrence F. McVerry
SENIOR UNITED STATES DISTRICT JUDGE

cc: The Honorable Maureen P. Kelly
Chief United States Magistrate Judge

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